International Covenant on Civil and Political Rights

Distr.: General
11 December 2017

Original: English

Human Rights Committee

# Concluding observations on the fifth periodic report of Mauritius*

1. The Committee considered the fifth periodic report of Mauritius (CCPR/C/MUS/5) at its 3424th and 3425th meetings (see CCPR/C/SR.3424 and 3425), held on 23 and 24 October 2017. At its 3443th meeting, held on 6 November 2017, it adopted the present concluding observations.

## A. Introduction

2. The Committee welcomes the submission of the fifth periodic report of Mauritius, albeit six years late, and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures taken since the last review to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/MUS/Q/5/Add.1) to the list of issues (CCPR/C/MUS/Q/5), which were supplemented by the oral responses provided by the delegation, and for the supplementary information provided to it in writing.

## B. Positive aspects

3. The Committee welcomes the following legislative, institutional and policy measures taken by the State party:

(a) The Police Complaints Act, in 2013;

(b) The amendments to the Criminal Appeal Act, in 2013;

(c) The amendments to the Criminal Procedure Act, in 2011;

(d) The Local Government Act, in 2012;

(e) The Equal Opportunities Act, in 2012;

(f) The Protection of Human Rights (Amendment Act), in 2012;

(g) The International Criminal Court Act, in 2012;

(h) The Legal Aid and Legal Assistance Act, in 2012;

(i) The National Preventive Mechanism Act, in 2012;

(j) The Institute for Judicial and Legal Studies Act, in 2011;

(k) The Combating of Trafficking in Persons Act, in 2009.

* Adopted by the Committee at its 121st session (16 October–10 November 2017).

4. The Committee also welcomes the ratification of, or accession to, the following international instruments by the State party:

(a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in June 2011;

(b) The Convention on the Rights of Persons with Disabilities, in January 2010;

(c) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in February 2009;

(d) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in October 2008.

## C. Principal matters of concern and recommendations

### Applicability of the Covenant

5. The Committee is concerned that the Covenant has not yet been given full effect in the domestic legal order, and about the limited number of cases in which the Covenant has been referred to by courts (art. 2).

6. **The State party should give full effect to the Covenant in its domestic legal order and should also raise awareness of the rights in the Covenant among judges, lawyers and prosecutors so that its national laws are interpreted and applied in line with the Covenant.**

### National human rights commission

7. The Committee is concerned: (a) that the process for the selection and appointment of the members of the National Human Rights Commission and of its divisions is not sufficiently transparent and participative; (b) about the lack of clarity regarding the guarantee of tenure of mandate holders; (c) about the possible overlap of missions of the Commission's divisions; (d) that the absence of conflict of interests by the members is not guaranteed; and (e) about the lack of sufficient staff to enable the Commission to fully discharge its mandate (art. 2).

8. **The State party should: (a) ensure a more transparent and participative process for the selection and appointment of the members of the Commission and of its divisions, with a view to guaranteeing their independence; (b) guarantee their tenure; (c) take measures to prevent conflicts of interest in relation to members' duties; (d) clarify the missions of each division of the Commission; and (e) provide the Commission with sufficient and stable trained staff so as to enable it to properly discharge its mandate, in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).**

### Discrimination against lesbian, gay, bisexual and transgender persons

9. The Committee is concerned about reported cases of hate speech and violence, including death threats, brutality and humiliation, against lesbian, gay, bisexual and transgender persons. The Committee is also concerned that lesbian, gay, bisexual and transgender persons are not authorized to officially enter marriage or civil partnerships and are denied other rights relating to personal status. The Committee is further concerned that the provision of article 250 of the Criminal Code of Mauritius, which criminalizes "sodomy" and "bestiality", has not yet been repealed (arts. 2 and 23).

10. **The State party should firmly prevent, and protect lesbian, gay, bisexual and transgender persons from, all forms of discrimination based on sexual orientation and gender identity, and include this as grounds of discrimination in all relevant legislation, including in the Criminal Code. The State party should also take all the necessary measures to eradicate discrimination against lesbian, gay, bisexual and**

**transgender persons with regard to marriage or civil partnerships and repeal article 250 of the Criminal Code. Furthermore, the State party should ensure that all complaints of violence, including death threats and brutality, owing to discrimination against lesbian, gay, bisexual and transgender persons are registered by the police and investigated, and that those responsible are duly prosecuted and, if convicted, sanctioned with appropriate penalties. Moreover, the State party should train police officers, judges and prosecutors and conduct awareness-raising campaigns for the general public on the rights of lesbian, gay, bisexual and transgender persons.**

**Gender equality**

11. The Committee is concerned about discrimination against women at work in both the public and private sectors. It is also concerned that women occupy mostly low-skilled jobs and receive low wages. It is further concerned at the very low number of women in decision-making positions. The Committee regrets that only a very limited number of complaints is lodged before the Equal Opportunity Commission or referred to the Equal Opportunity Tribunal, a situation that raises questions about the difficulties women victims of discrimination may face in accessing those bodies (art. 3).

12. **The State party should: (a) facilitate complaints from women victims of discrimination at work and take appropriate measures to protect them from reprisals; (b) enforce regulations on the equal pay for work of equal value; (c) increase inspections in workplaces, and investigate and sanction companies that do not comply with regulations; (d) take measures to empower women in higher-skilled jobs and in decision-making positions.**

**Representation of women in political and public affairs**

13. The Committee welcomes the fact that the implementation of the Local Government Act of 2012 has improved the representation of women in decision-making bodies at the municipal and village council levels. However, the Committee remains concerned that the percentage of women elected to the National Assembly (11.4 per cent) and appointed to the Cabinet (12 per cent), remains low (arts. 3 and 25).

14. **The State party should continue improving the representation of women in decision-making bodies at the national level, including in the Cabinet. For that purpose, the State party should increase women's participation in politics and decision-making bodies by 30 per cent, in the light of the decision taken by the Southern African Development Community. The State party should also pursue awareness-raising campaigns to encourage women to engage in public and political affairs.**

**Voluntary termination of pregnancy and reproductive rights**

15. The Committee takes note of the 2012 amendments to the Criminal Code, which authorize the voluntary termination of a pregnancy in specific circumstances. However, the Committee is concerned that the data provided by the State party on "cases treated for complications of abortion" contrast with those on "authorized termination of pregnancies", which causes the Committee to be concerned that a high number of women resort to clandestine abortions that endanger their lives and health, including resulting in deaths (arts. 3, 6, 7, 17 and 26).

16. **The State party should amend its legislation to guarantee safe, legal and effective access to abortion where the life or health of the pregnant woman or girl is at risk, and where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or non-viable. In addition, the State party may not regulate pregnancy or abortion in all other cases in a manner that runs contrary to its duty to ensure that women and girls do not have to undertake unsafe abortions. The State party should revise its abortion laws accordingly. The State party should not apply criminal sanctions against women and girls undergoing abortion or against medical service providers assisting them in doing so, since taking such measures compels women and**

**girls to resort to unsafe abortions. The State party should ensure access to affordable contraceptives, quality information and education programmes on sexual and reproductive rights for men, women and adolescents throughout the country.**

**Death penalty**

17. The Committee regrets that, although the State party abolished the death penalty in 1995, it has not yet ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. The Committee does not consider the language of the Constitution, which does not prohibit the death penalty, to be an impediment to ratification of the Second Optional Protocol to the Covenant (art. 6).

18. **The State party should consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.**

**Domestic violence, including violence against women**

19. While noting the amendments to enhance the provisions of the Protection from Domestic Violence Act of 2007 and the various mechanisms set up to reinforce the framework for protection against domestic violence, in particular gender-based violence, the Committee is concerned about the persistence of violence against women in the State party, which, in some instances, results in deaths. It is also concerned that the State party has not yet criminalized marital rape. While noting that an increased number of cases are reported, the Committee is concerned that women do not always report cases of violence to the police (arts. 3, 7 and 23).

20. **The State party should further strengthen its efforts to combat violence against women, in particular by: (a) effectively implementing its existing legislation on domestic violence, including by bringing to justice and sanctioning perpetrators; (b) pursuing and intensifying its awareness-raising campaigns on the negative effects of violence against women, encouraging women to report cases of domestic violence, facilitating complaints to the police and protecting women against any form of reprisal or social reprobation; (d) continuing to train police officers, judges and prosecutors who handle gender-based violence cases; and (e) providing adequate assistance to women victims and trained staff in shelters or in government institutions.**

21. While noting the different measures taken by the State party, the Committee is concerned about reports of increased acts of violence and abuse against elderly persons, which mostly take place within families and in care institutions (arts. 2 and 23).

22. **The State party should ensure the effective application of the Protection for the Elderly Persons Act by: (a) facilitating the reporting of and complaints about violence and abuse against the elderly; (b) strengthening the Welfare and Elderly Persons Protection Unit; (c) carrying out awareness-raising campaigns targeting elderly persons and their families; and (d) training staff working in care institutions. It should further accelerate the adoption of the National Strategy Paper and Action Plan on Aging and allocate the necessary human and financial resources for its effective implementation.**

**Corporal punishment**

23. The Committee is concerned that corporal punishment is not yet explicitly prohibited in the home, in day-care and alternative care settings and in penal institutions (arts. 7 and 24).

24. **The State party should prohibit corporal punishment in all settings.**

**Trafficking in persons**

25. While noting that the State party has enacted the Combating of Trafficking in Persons Act of 2009, the Committee is concerned that trafficking, including of children and migrants, for sexual and labour exploitation purposes, persists in the State party. It regrets the low number of cases related to trafficking brought before the courts (art. 8).

26. **The State party should ensure a more effective enforcement of the Combating of Trafficking in Persons Act of 2009 and other relevant legislation. It should also facilitate complaints from victims of trafficking, in particular those with migrant origins; protect them from reprisals; and set up centres with trained staff to provide material, medical and psychological support to victims. The State party should train its law enforcement officers, including police officers, border control officers, judges and prosecutors, who handle cases related to trafficking in persons.**

**Human rights and terrorism**

27. The Committee is concerned that, under section 3 of the Prevention of Terrorism (Denial of Bail) Act, a detainee suspected of an offence relating to terrorism can be denied release on bail in certain cases. It is also concerned that, under section 27 of the Prevention of Terrorism Act, a person under suspicion of an offence relating to terrorism can be detained without access to anyone, including counsel, for a period of up to 36 hours. It regrets the lack of statistical data on the application of legislation on terrorism, in particular the number of arrests, detentions, investigations and convictions (art. 9).

28. **The State party should ensure that its legislation on terrorism is in full compliance with the provisions of article 9 of the Covenant, and that all legal guarantees against arbitrariness and abusiveness are available to the persons arrested and detained, including the possibility of access to a lawyer as soon as possible. The State party should guarantee that judges are authorized to decide whether to release a suspect on bail. The State party should collect and publish statistical data on the application of the Prevention of Terrorism Act, in particular on the number of arrests, detentions, releases, investigations, convictions and sentences pronounced.**

**Pretrial detention**

29. The Committee is concerned about the high number of persons in pretrial detention, the duration of which is excessive in many instances, in particular detention on drug-related cases (art. 9).

30. **In the context of its 10-year strategic plan on pretrial detention, the State party should firmly address the problem of pretrial detention and consider using alternatives to deprivation of liberty more frequently. It should also speed up the examination of cases pending before tribunals and courts. The State party should amend its legislation to deduct the time already served in pretrial detention from imposed sentences, and render the payment of bail affordable to a larger number of detainees.**

**Provisional charges**

31. While noting the information provided by the State party that it intends to abolish the system of provisional charges, the Committee is concerned that the system under which a person may be detained upon suspicion of commission of a serious offence may result in abusiveness and arbitrariness. The Committee reiterates its concern (see CCPR/CO/83/MUS, para. 14) about the absence of conformity of articles 5, paragraph 1 (k) and 4 of the State party's Constitution with the Covenant (art. 9).

32. **The State party should amend its legislation to remove the rule of provisional charges as well as amend articles 5, paragraph 1 (k) and 4 of its Constitution to bring them into full conformity with the Covenant. The State party should accelerate the adoption of the new bill on criminal evidence and align it with the provisions of the Covenant.**

**Complaints against security forces**

33. The Committee is concerned about reports of ill-treatment inflicted by security forces on persons deprived of their liberty. The Committee regrets the lack of clear information about the overall number of complaints lodged, the nature and authors of the alleged acts, investigations carried out, convictions, sanctions imposed on those responsible and reparation granted to victims. The Committee notes the establishment of a new Police

Complaints Division within the National Human Rights Commission that is tasked with investigating complaints against the security forces; however, it regrets the lack of details on the human and financial resources at its disposal (arts. 7 and 14).

34. **The State party should ensure that, in all cases of ill-treatment by security forces (police and prison officers): (a) victims can complain; (b) impartial, thorough and effective investigations are carried out into allegations; and (c) those responsible are prosecuted and, if convicted, punished with appropriate sanctions and victims have access to effective remedies. The State party should provide the Police Complaints Division with adequate and sufficient human and financial resources to enable it to properly carry out its mandate, and it should extend the use of video recordings to all police and detention settings so as to prevent ill-treatment.**

### Conditions of detention in prisons

35. The Committee is concerned about reports of poor conditions of detention in the prisons of the State party. It is also concerned about reported suicides that have occurred in prisons. The Committee is further concerned that detainees are not always separated depending on their detention regime (arts. 6 and 10).

36. **The State party should improve the detention conditions in its prisons, including by ensuring the separation of remand detainees from those serving a prison sentence. It should take concrete measures to prevent suicide by detainees. It should also continue to apply alternatives to detention, where possible.**

### Refugees, asylum seekers and stateless persons

37. While noting the information provided by the State party, the Committee remains concerned about the absence of a national legal framework for determining refugee status and to protect the rights of those in need of international protection. The Committee is also concerned about the lack of a national mechanism on statelessness. It regrets the lack of information on the number of asylum seekers, refugees and stateless persons residing in the territory of the State party (arts. 2, 6, 7 and 13).

38. **The State party should consider establishing a national framework on asylum, including a mechanism for assessing and determining refugee status in order to also ensure respect of the principle of non-refoulement. It should take the necessary measures to prevent statelessness, and collect and publish information on the number of asylum seekers, refugees and stateless persons residing in its territory.**

### Juvenile justice

39. The Committee is concerned about: (a) the absence of a clear legal provision concerning the minimum age of criminal responsibility and of juvenile justice tribunals with specialized judges; (b) reports that lawyers do not always assist children facing justice, and legal aid is not always available to them; and (c) information that children are often tried in the absence of their legal representatives or guardians. While noting the information provided, the Committee is further concerned that, under the Juvenile Offenders Act, children considered as being "beyond control" are placed in closed institutions at the request of their parents (art. 14 and 24).

40. **The State party should: (a) set a minimum age of criminal responsibility in its legislation in accordance with international standards; (b) finalize the setting up of juvenile justice tribunals and related procedures and provide them with adequate human, technical and financial resources, including designating specialized trained judges; (c) train police officers to handle cases relating to juvenile justice; and (d) ensure that children in conflict with the law are systematically assisted by a lawyer or counsel and appear for trial with their legal representatives.**

**Participation in public and political affairs**

41. While noting that the State party has set up a Ministerial Committee to work on reforming the electoral system in the light of the Committee's Views in the case of *Narrain et al. v. Mauritius* (CCPR/C/105/D/1744/2007), the Committee is concerned about the lack of fair representation of the various components of the population of the State party in public and political affairs (art. 25).

42. **The State party should ensure that the new electoral system addresses obstacles to the participation in political life by, and adequate representation of, all components of its population.**

## D. Dissemination and follow-up

43. The State party should widely disseminate the Covenant, its fifth periodic report, the written replies to the Committee's list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the periodic report and the present concluding observations are translated into the official languages of the State party.

44. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, by 10 November 2019, information on the implementation of the recommendations made by the Committee in paragraphs 8 (national human rights commission), 38 (refugees, asylum seekers and stateless persons) and 40 (juvenile justice) above.

45. The Committee requests the State party to submit its next periodic report by 10 November 2022 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and the implementation of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country, as well as minority and marginalized groups. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. Alternatively, the Committee invites the State party to agree, within one year after the adoption of the concluding observations, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its report. The State party's replies to that list of issues will constitute its next periodic report to be submitted under article 40 of the Covenant.